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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 JEFFREY PAUL GIBLIN,

7 Plaintiff,

8 v.

9 ZACHARY BLOOMFIELD, et al.,

10 Defendants.

Case No. C19-5480 BHS-TLF

ORDER TO SHOW CAUSE OR  
AMEND COMPLAINT

11 This matter comes before the Court on plaintiff's filing of a civil rights complaint. Dkt. 5.  
12 Plaintiff has been granted leave to proceed *in forma pauperis*. Dkt. 4. In light of the deficiencies  
13 in the complaint, the undersigned will not direct service of the complaint at this time. Plaintiff  
14 will be provided the opportunity by November 15, 2019 to show cause why the complaint should  
15 not be dismissed or file an amended complaint.

16 The Court must dismiss the complaint of a prisoner proceeding *in forma pauperis* "at any  
17 time if the [C]ourt determines" that the action: (a) "is frivolous or malicious"; (b) "fails to state a  
18 claim on which relief may be granted" or (c) "seeks monetary relief against a defendant who is  
19 immune from such relief." 28 U.S.C. § 1915A(a), (b). A complaint is frivolous when it has no  
20 arguable basis in law or fact. *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

21 Before the Court may dismiss the complaint as frivolous or for failure to state a claim, it  
22 "must provide the [prisoner] with notice of the deficiencies in his or her complaint and an  
23 opportunity to amend the complaint prior to dismissal." *McGucken v. Smith*, 974 F.2d 1050,  
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1 1055 (9th Cir. 1992). On the other hand, leave to amend need not be granted “where the  
2 amendment would be futile or where the amended complaint would be subject to dismissal.”  
3 *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

4 Plaintiff alleges that in 2016 he was involved in a road rage incident wherein he was  
5 assaulted and fled the scene in fear of his own safety and the safety of his son. Dkt. 5 at p. 3. The  
6 complaint states that during this incident, as plaintiff was fleeing, one of the alleged assailants  
7 was injured resulting in the amputation of the person’s lower leg. *Id.* As a result of this incident  
8 plaintiff was convicted “of acting with intent to commit First Degree Assault as a hate crime.” *Id.*

9 Plaintiff alleges that he was wrongfully convicted. *Id.* Plaintiff contends that the facts and  
10 eyewitness testimony do not support the conviction. *Id.* Plaintiff further alleges that the State  
11 attained a false conviction against plaintiff by purposefully altering evidence, fabricating  
12 evidence and concealing exculpatory evidence. *Id.*

13 I. 42 U.S.C. § 1983

14 42 U.S.C. § 1983 “affords a ‘civil remedy’ for deprivation of federally protected rights  
15 caused by person acting under color of state law.” *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)  
16 *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986). To state a claim  
17 under Section 1983, a complaint must allege: (1) the conduct complained of was committed by a  
18 person acting under color of state law, and (2) the conduct deprived a person of a right, privilege,  
19 or immunity secured by the Constitution or laws of the United States. *Id.* Section 1983 is the  
20 appropriate avenue to remedy an alleged wrong only if both of these elements are present.  
21 *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

22 To state a claim under Section 1983, a plaintiff must set forth the specific factual bases  
23 upon which the plaintiff claims each defendant is liable. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092  
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1 (9th Cir. 1982). Vague and conclusory allegations of officials participating in a civil rights  
2 violation are not sufficient to support a claim under Section 1983. *Ivey v. Board of Regents*, 673  
3 F.2d 266, 269 (9th Cir. 1982).

4 Plaintiff's complaint fails to state a cause of action under Section 1983. Plaintiff's  
5 complaint relies on vague and conclusory allegations of wrongdoing without providing factual  
6 allegations supporting these claims. Dkt. 5 at p. 3-4. Plaintiff's complaint alleges that the "State"  
7 altered evidence, fabricated evidence and concealed evidence. *Id.* Plaintiff's complaint also  
8 identifies evidence that was allegedly altered or fabricated. *Id.* However, plaintiff does not  
9 identify a specific person who purportedly altered the evidence; nor does plaintiff describe any  
10 acts or omissions, or causation -- i.e., how any state official's actions (or failure to act) deprived  
11 plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United  
12 States. Plaintiff also fails to identify any person who acted under color of state law to violate  
13 plaintiff's federally protected rights.

## 14 II. Improper Defendant

15 For purposes of Section 1983, neither a state nor its officials acting in their official  
16 capacities constitute a "person." *Will v. Michigan*, 491 U.S. 58, 64 (1989). Additionally, the  
17 Eleventh Amendment of the United States Constitution prohibits a private citizen from suing a  
18 state government in federal court without the state's consent. *See, Tenn. Student Assistance*  
19 *Corp. v. Hood*, 541 U.S. 440, 446 (2004); *Natural Resources Defense Council v. California*  
20 *Dep't of Transportation*, 96 F.3d 420, 421 (9th Cir. 1996). Therefore, neither the state nor an  
21 official acting in their official capacity can be sued for damages pursuant to Section 1983.

22 Plaintiff's complaint vaguely alleges that the "State" violated his federally protected  
23 rights. To the extent that plaintiff is naming the state of Washington as a defendant in this  
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1 Section 1983 action, the state of Washington is both an improper defendant under Section 1983  
2 and immune from plaintiff's claims under the Eleventh Amendment. To state a cause of action  
3 under Section 1983 plaintiff must name specific individuals (acting under color of state law) as  
4 defendants and must allege specific facts to show which individual acted or failed to act, and  
5 facts that would show that the act(s) or omission(s) caused harm to the plaintiff that is allegedly a  
6 violation of a specific constitutional right.

### 7 III. Heck Barred

8 When a person confined by the government is challenging the very fact or duration of his  
9 physical imprisonment, and the relief he seeks will determine that he is or was entitled to  
10 immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ  
11 of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). "[T]o recover damages for an  
12 alleged unconstitutional conviction or imprisonment, or for other harm caused by actions whose  
13 unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that  
14 the conviction or sentence has been reversed on direct appeal, expunged by executive order,  
15 declared invalid by a state tribunal authorized to make such determination, or called into  
16 question by a federal court's issuance of writ of habeas corpus, 28 U.S.C. § 2254." *Heck v.*  
17 *Humphrey*, 512 U.S. 477, 486-87 (1994).

18 In order to state a Section 1983 claim that would necessarily invalidate a prisoner's  
19 confinement or its duration, the plaintiff must establish that the sentence or conviction was  
20 invalidated *before* plaintiff filed the Section 1983 action. *Wilkinson v. Dotson*, 544 U.S. 74, 82  
21 (2005).

22 Plaintiff's complaint expressly states that "[t]he relief sought via this suit is NOT  
23 restoration of Plaintiff's Liberty, but rather restitution of damages incurred as a result of State  
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1 purposefully altering the scene of the incident and concealing the presences of government  
2 funded public recordings of the incident that proves the truth of the events on 9.10.16 and the  
3 innocence of the Plaintiff.” Dkt. 5 at p. 3. Additionally, plaintiff alleges that he was “falsely  
4 convicted.” *Id.* Accordingly, it appears from plaintiff’s allegations that the allegations in his  
5 complaint necessarily involve a challenge to the validity of his conviction. Plaintiff’s complaint  
6 is also alleging “harm caused by actions whose unlawfulness would render a conviction or  
7 sentence invalid.” *Heck*, 512 U.S. at 486-87. Accordingly, it appears that plaintiff’s complaint is  
8 barred by *Heck* unless plaintiff can show that his conviction has been reversed, expunged, or  
9 otherwise invalidated prior to filing this action. Plaintiff has made no such allegations in his  
10 complaint.

11 For the foregoing reasons, plaintiff’s complaint indicates that his claims are barred by  
12 *Heck*.

### 13 Conclusion

14 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff  
15 may show cause why his complaint should not be dismissed or may file an amended complaint to  
16 cure, if possible, the deficiencies noted herein, on or before **November 15, 2019**. If an amended  
17 complaint is filed, it must be legibly written or retyped in its entirety and contain the same case  
18 number. Any cause of action alleged in the original complaint that is not alleged in the amended  
19 complaint is waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in*  
20 *part on other grounds*, *Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

21 The Court will screen the amended complaint to determine whether it states a claim for  
22 relief cognizable under 42 U.S.C. § 1983. If the amended complaint is not timely filed or fails to  
23 adequately address the issues raised herein, the undersigned will recommend dismissal of this  
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1 action as frivolous under 28 U.S.C. § 1915, and the dismissal will count as a “strike” under 28  
2 U.S.C. § 1915(g). Plaintiff should be aware that a prisoner who brings three or more civil actions  
3 or appeals that are dismissed on the grounds that they are legally frivolous, malicious, or fail to  
4 state a claim, will be precluded from bringing any other civil action or appeal *in forma pauperis*,  
5 “unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

6 The Clerk is directed to send plaintiff the appropriate forms for filing 42 U.S.C. § 1983  
7 civil rights complaint and for service, a copy of this Order and the *Pro Se* information sheet.

8 Dated this 28th day of October, 2019.

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12 Theresa L. Fricke  
13 United States Magistrate Judge  
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